

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 161 of 1983

Hon'ble MR.JUSTICE S.M.SONI

And

MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

USMANBHAI I MEMON

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR JP SHAH for Petitioner

MR BJ SHELAT FOR MR MANISH R BHATT for Respondent

CORAM : MR.JUSTICE S.M.SONI and

MR.JUSTICE Y.B.BHATT

Date of decision: 25/10/96

ORAL JUDGEMENT(Per S.M. Soni J.)

1. At the instance of the assessee the Income-Tax Appellate Tribunal, Ahmedabad Bench has referred, for our opinion, the following questions:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the action under section 147(a) of the Income-tax Act was validly initiated by the Income-tax Officer?".

"2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the date of transfer for the purpose of determining the liability to the capital gain should be on date of execution of the sale deeds and not the date of registration of the sale deeds?"

"3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that when a Partner contributed capital in the form of land to the firm the transaction amounted to 'transfer' within the meaning of section 2(47) of the Act?"

2. The assessment year involved is 1974-75. For proper appreciation of the contentions raised by the parties, we reframe the question no.3 as under:

"Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that when a partner contributed capital in the form of land to the firm, the transaction amounted to transfer within the meaning of section 2(47) of the Act resulting into taxable capital."

3. We would like to consider this third question first. The assessee had entered into a partnership on 7th September 1973 with nine other parties forming a firm styled as "M/s Usmangani & Co.". The business of the new firm was to acquire land and property and sell buildings. The assessee had transferred the land belonging to him in favour of the said firm which according to the assessee did not amount to 'transfer' so as to attract capital gains in view of the Supreme Court decision in the case of Hind Construction Limited.

4. In view of the judgement of the Supreme Court in the case of Sunil Siddharthbhai Vs. CIT (156 ITR 509), the transfer of land belonging to the assessee in favour of the said firm is a 'transfer'. The question involved in the said case was of transfer of certain shares and the Supreme Court held:

"In its general sense, the expression "transfer of property" connotes the passing of rights in property from one person to another. In one case, there may be a passing of the entire bundle of rights from the transferor to the transferee. In another case, the transfer may consist of one of the estates only out of all the estates comprising the totality of rights in the property. In a third case, there may be a reduction of the exclusive interest in the totality of rights of the original owner into a joint or shared interest with other persons. An exclusive interest in property is a larger interest than a share in that property. To the extent to which the exclusive interest is reduced to a shared interest, there is a transfer of interest.

In the instant case on transfer of the property and transfer of the land belonging to the assessee in favour of the firm, the same has become the property of the firm. Thus, the exclusive interest in land is reduced to a shared interest in land. Thus, there is a transfer of land.

5. The question is whether the said transfer is resulting into taxable capital gain or not. In the case of Sunil Siddharthbhai (supra) the Supreme Court held that when an assessee, a partner in a firm, made over to the firm certain shares in a company which were held by him, there was a "transfer" of the shares, but that he received no consideration within the meaning of section 48. Nor did any profit or gain accrue to him for the purpose of section 45. Thus, though there is a transfer, the same is not resulting into capital gain. In view of this legal position, question no.3 as amended is answered as under:

6. There is a transfer within the meaning of section 2(47) of the Act, but the transfer is not resulting into taxable capital gain. Thus, so far as question of transfer is concerned, the question is answered in favour of the revenue, but so far as whether it is resulting into capital gain, it is answered in favour of the assessee. Thus the question is answered accordingly.

7. In view of our answer to question no.3 we are of the opinion that question nos.2 and 3 have remained academic and we need not answer the same.

8. This reference stands disposed of accordingly.
